

**OPINION
77-51**

May 26, 1977 (OPINION)

The Honorable Byron Knutson
Commissioner of Insurance
State Capitol
Bismarck, ND 58505

RE: H.B. 1594

Dear Mr. Knutson:

This is in reply to your letter of May 19, 1977, relative to H.B. 1594. You state the following facts and questions:

"We have been asked to review the above legislation because of the possibility of complications arising from the use of the word 'following' on line ten.

It appears that if the bill is interpreted literally insurance coverages will be for the usual period, i.e., monthly, quarterly, semiannual or annual, plus a day. In discussing this bill with members of the staff of the legislative council it is clear that the intent was that coverage should cease at 12:01 a.m. on the day of expiration. This would result in coverages for normally and usually anticipated and contracted for periods of time.

Will you please advise this department if you agree with our conclusions."

H.B. 1594 is entitled an act to provide for the inception and expiration times of insurance policies. It reads as follows:

"INCEPTION AND EXPIRATION OF POLICIES. Policies of insurance shall cover the insured at 12:01 a.m. on the day on which coverage begins and shall expire at 12:01 a.m. following the day of expiration of such policy." (Emphasis ours)

The bill was not amended after its introduction and was enacted as it was introduced. While it may have been the intent of the legislation that insurance policies expire at 12:01 a.m. on the day of expiration, we have considerable difficulty in adopting that conclusion. Rules of statutory construction, including the determination of legislative intent, are available only if the statute is ambiguous on its face. See, e.g. Rausch v. Nelson, 134 N.W.2d. 519 (N.D. 1965) in which the North Dakota Supreme Court held that where the language of a statute is plain and unambiguous, the court cannot indulge in speculation as to probable or possible qualifications which might have been in mind of the Legislature, but the statute must be given effect according to its plain and obvious meaning.

In this instance it is difficult to determine that the statute is ambiguous. It clearly states the policies shall expire at 12:01 a.m.

"following the day of expiration of such policy." The term "following the day of expiration of such policy" can have only one meaning in our mind, i.e., that the policy will expire at 12:01 a.m. of the day following the day of expiration. Had the Legislature intended it to be at 12:01 a.m. on the day of expiration it would appear they would have excluded the word "following." The statute would then have read: Policies . . . shall expire at 12:01 a.m. the day of expiration of such policy." The inclusion of the word "following" in the statute obviously gives it a different meaning. Since 12:01 a.m. can arrive only once each day, i.e., the day of expiration or following the day of expiration it would appear to us that the words have only one plain and obvious meaning.

We have also examined the minutes of the Senate and House Business, Industry, and Labor Committees which heard this bill. The minutes do not reflect any intent except to establish a uniform time for the beginning and expiration of insurance contracts. Therefore we do not find that the legislative intent of the bill is unclear in that respect. The intent of individual legislators cannot, of course, be considered. See, e.g., *Rausch v. Nelson*, supra.

It would appear to us that a conclusion by this office which is contrary to the plain language of the statute would cause great confusion and disruption since we believe that if such a conclusion were challenged in court, the court would hold the plain language of the statute would be controlling.

We have not considered herein the applicability of this statute to contracts of insurance entered into before the effective date of the statute since that question has not been presented to us. However, we believe it is applicable to any contracts of insurance entered into after its effective date, e.e., July 1, 1977.

We trust this will adequately set forth our position on the question presented.

Sincerely,

ALLEN I. OLSON

Attorney General